STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA A. BUTCHER,

Plaintiff-Appellant,

v

CHARLES H. BUTCHER, JR.,

Defendant-Appellee.

UNPUBLISHED
February 11, 2003

No. 235671
Charlevoix Circuit Court
LC No. 00-459-19-DO

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. Specifically, plaintiff challenges the trial court's determination that the prenuptial agreement was valid and the trial court's distribution of the marital home. We affirm in part, reverse in part, and remand.

The parties were married for approximately six years following a five year dating relationship. About six months before their marriage, using funds which he had inherited, defendant purchased a house that would become the marital home. The deed to this home states that the parties are joint tenants with full rights of survivorship and not tenants in common. Several days before the wedding, defendant requested that plaintiff sign a prenuptial agreement. Plaintiff testified that she signed the agreement voluntarily, but explained that she did so because the wedding was imminent, and because defendant told her that the wedding would be canceled if she did not. Plaintiff stated that the marriage began to deteriorate following an occasion where she was hospitalized and she felt that defendant was not supportive in her recovery. Thereafter, she filed for divorce.

Plaintiff asserts first that the trial court erred when it found the prenuptial agreement valid and enforceable. We disagree. Findings of fact are reviewed under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding of fact is clearly erroneous if an appellate court, considering all the evidence, is left with a definite and firm conviction that the trial court made a mistake. *Dragoo v Dragoo* 223 Mich App 415, 429; 566 NW2d 642 (1997). Further, in *Rinvelt v Rinvelt*, 190 Mich App 372, 380-382; 475 NW2d 478 (1991), this Court discussed prenuptial agreements governing the division of property in the event of divorce and stated that they are typically enforceable in Michigan except:

> (1) where the agreement was obtained through fraud, duress or mistake, or misrepresentation or nondisclosure of material fact;

(2) where the agreement was unconscionable when executed;

(3) or where the facts and circumstances have changed since the agreement was executed, so as to make its enforcement unfair and unreasonable.

Plaintiff first asserts that the prenuptial agreement is invalid because it was obtained through duress. We agree with the trial court that there was no evidence of duress. Our review of the record reveals that plaintiff had the opportunity to make changes to the agreement in the week preceding the wedding, she had a long and trusting relationship with the attorney who drafted the agreement, and the agreement stated that the contents and meaning of the agreement had been fully explained to plaintiff and that she voluntarily signed it. The mere fact that it was signed close in time to the wedding does not by itself invalidate it. See *Storey v Storey*, 275 Mich 675, 679; 267 NW 763 (1936). Further, the record does not indicate that there was a failure to disclose any material fact. Plaintiff admitted she was familiar with defendant's financial situation at the time of the marriage, and that she did not discover that defendant hid anything from her over the course of the marriage.

Plaintiff contends on appeal that the agreement was unconscionable when it was executed. However, she provides only that conclusory statement without further development or explanation. To properly present an appeal, an appellant must appropriately argue the merits of the issues she identifies in her statement of the questions involved. *Ewing v Detroit*, 252 Mich App 149, 169; 651 NW2d 780 (2002). The appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We conclude that plaintiff has abandoned the issue. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Plaintiff next argues that the agreement should have been found to be invalid because "the facts and circumstances have changed since the agreement was executed, so as to make its enforcement unfair and unreasonable." She asserts that her change in health, and the years of labor she put in to defendant's rental properties constitute a change of circumstances. We do not find that the record supports this contention. Plaintiff entered the marriage making approximately $20,000 per year, and she expects to earn about that much or more in the future from her new business. Plaintiff does have significant health problems. However, she testified that she expects that her health will not prevent her from working in her consignment shop and earning a living consistent with her pre-marriage earnings. Further, many of her health conditions, including her knee problems, were present before the marriage. Thus, her health has not deteriorated to the point where she is now unable to support herself. Plaintiff was compensated for the work she did on the rental properties when she was paid an hourly wage of $10 to $15 dollars per hour. Plaintiff's work on defendant's properties does not constitute a change in circumstances.

Plaintiff also argues that if the agreement is valid, the trial court erred in its interpretation of it, and as a result, was incorrect when it failed to award her one-half interest in the marital home. We agree. Antenuptial agreements, like other written contracts, are matters of agreement by the parties, and the function of the court is to determine what the agreement is and enforce it. See *Eghotz v Creech*, 365 Mich 527, 530; 113 NW2d 815 (1962). Contract terms must be strictly enforced as written, and unambiguous terms must be construed according to their plain and ordinary meaning. *South Macomb Disposal Authority v American Ins Co (On Remand)*, 225

Mich App 635, 653; 572 NW2d 686 (1997). If the agreement fairly admits of but one interpretation, even if inartfully worded or clumsily arranged, it is not ambiguous. *Meagher v Wayne State Univ,* 222 Mich App 700, 722; 565 NW2d 401 (1997). In the present situation, the plain terms of the prenuptial agreement, support plaintiff's argument that she is entitled to an undivided one-half interest in the marital home. The first page of the prenuptial agreement contains the following:

> Each party has disclosed to the other the nature and extent of his or her various property interests and the sources of his or her income, and stipulate and agree that neither party will lay claim or interest in the other party's assets hereinafter listed on Exhibits "A" and "B" as belonging to the individual parties prior to contemplated marriage, should this marriage be terminated by anything other than natural causes of death.

The second page of the agreement states:

> This Agreement is intended to apply both to the property owned by the respective parties hereto prior to their marriage as well as to all property which may be acquired by either of them individually or jointly with one another or with others during the marriage.

With regard to divorce, the prenuptial agreement states in relevant part:

> However, in the event of a divorce between the parties, the parties agree that neither will make any claim to the assets of the other which were owned prior to the marriage[.]

Attached to the prenuptial agreement are Exhibits "A" and "B." These exhibits list the individual assets of plaintiff (exhibit A) and defendant (exhibit B). Included at the bottom of each list, is the following: "Joint Asset with Charles H. Butcher, Jr. & Patricia A. Dillon Property located at 06362 Old U.S. 31 South, Charlevoix, MI." This refers to the home, purchased *before the marriage*, that later became the marital home. The deed to this home states that the parties are "joint tenanats [sic] with full rights of survivorship and not as tenants in common."

Before the marriage, plaintiff owned an undivided one-half interest in what became the marital home. This interest is evidenced by 1) its inclusion on her list of individual assets and 2) the deed to the home. The prenuptial agreement plainly states that upon divorce, "neither [party] will make any claim to the assets of the other which were owned prior to the marriage." Although it is a joint asset, plaintiff's undivided half interest was hers before the marriage and the inclusion of it on both lists of separate assets indicates that the parties intended that the half interest be considered as each one's separate asset. Thus, according to the plain terms of the agreement, defendant may not make any claim on plaintiff's one-half interest in the home.

We note that land deeded to parties as joint tenants with full rights of survivorship and not as tenants in common cannot be partitioned. *Fuller v Fuller*, 123 Mich App 592, 596-599; 332 NW2d 623 (1983). However, MCL 552.102(2) provides:

> Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

Accordingly, upon divorce, the parties have become tenants in common in their marital home. Therefore, the property may now be divided, and plaintiff may now be awarded her one-half interest pursuant to the terms of the prenuptial agreement.

Plaintiff's next issue is that the trial court should have considered the appreciation of defendant's rental properties and divided that appreciation between the two parties. However, the valid prenuptial agreement clearly states, "all assets owned by [defendant] . . . shall remain and be his separate property . . . and wife shall not acquire by reason of contemplated marriage . . . any interest in his property or estate, or right to any interest in the income, appreciation in value, rents . . .therefrom." Because defendant purchased the properties in question prior to the marriage, and the prenuptial agreement is valid and enforceable, plaintiff has no claim to the appreciation of the rental properties under the prenuptial agreement.

Plaintiff also argues that she made a significant contribution to the acquisition, improvement, or accumulation of defendant's separate properties. Defendant purchased the properties with the inheritance he received prior to marriage; thus, plaintiff did not make any contribution to their acquisition. With regard to the improvement and maintenance of the properties, plaintiff asserts that she contributed to this aspect by cleaning, mowing lawns, and painting the apartments. However, defendant paid plaintiff between $10 and $15 per hour for this work. Thus, she has already been compensated for her efforts, and she is not entitled to appellate relief on this issue.

Plaintiff's final contention on appeal is that the trial court should have determined that the wife's allegations of abuse were truthful, and the property division should have been weighted in her favor. As noted above, findings of fact are reviewed under the "clearly erroneous" standard. *Sparks, supra*, 440 Mich 151-152. A finding of fact is "clearly erroneous" if an appellate court, considering all the evidence, is left with a definite and firm conviction that the trial court made a mistake. *Dragoo, supra*, 223 Mich App 429.

Our Supreme Court's decision in *Sparks, supra*, provides assistance with our analysis in the instant case. *Sparks, supra*, 440 Mich 158. "We recognize that the conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Id*. In the present case, the trial court examined the issue of fault and noted that defendant abused alcohol early in the marriage. However, it further noted that defendant gained control of the problem and never used alcohol again for the duration of the marriage. The trial court recognized that the incident of physical abuse when defendant hit plaintiff in the face with a newspaper occurred early in the marriage and was an isolated incident. Neither the alcohol nor the newspaper incident caused the breakdown of the marriage. After reviewing the record, and considering all the evidence, we are not left with a definite and firm conviction that the trial court made a mistake. *Dragoo, supra*, 223 Mich App 429.

Affirmed in part, reversed in part, and remanded for entry of an order awarding plaintiff one-half the value of the marital home. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio